

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(Phonorecords IV)

Docket No. 21-CRB-0001-PR  
(2023-2027)

**WRITTEN DIRECT STATEMENT  
OF COPYRIGHT OWNERS**

**VOLUME II**

**PUBLIC VERSION**

Before the  
UNITED STATES COPYRIGHT BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES  
AND TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(Phonorecords IV)

Docket No. 21–CRB–0001–PR (2023–2027)

**WRITTEN DIRECT TESTIMONY OF STEVE BOGARD**

1. My name is Steve Bogard and I live in Nashville, Tennessee. I respectfully submit this statement to the Copyright Royalty Board on behalf of National Music Publishers’ Association and Nashville Songwriters Association International (“NSAI”) in support of their proposal to increase the statutory mechanical rate for interactive audio streaming. Under the current statutory rate, songwriters are undervalued and underpaid, and non-performing songwriters who are not also recording artists are, in particular, struggling to make a living at their chosen craft.

2. I have been a professional songwriter for well over 50 years. I have had chart records in each of the last six decades and Number 1 Country hits in each of the last four. After youthful attempts at an artist career, I moved to Nashville nearly forty years ago. I have written ten Number 1 songs and have had hundreds of my songs recorded by best-selling artists such as Waylon Jennings, Conway Twitty, George Strait, Dierks Bentley, Tanya Tucker, Etta James, The Four Tops, Tim McGraw, Gary Allan, Reba McEntire, Dustin Lynch, and many more. I am currently the President of NSAI.

3. I was a witness in the *Phonorecords III* proceeding and testified before the Copyright Royalty Board in Washington D.C.<sup>1</sup> In that proceeding, I testified that the then-existing rates and rate structure failed to compensate songwriters fairly for the streams and limited downloads of their songs. Unfortunately, despite the Judges' final determination to increase the rates – which I do appreciate – that ruling has, in practice, not improved the economic situation of the professional songwriter.

4. Songwriters are the foundation, the wellspring of the music industry. Without songwriters, there would be no record companies, recording artists, record producers, concerts, or on-demand streaming services. But songwriters have never had the ability to negotiate the value of our work and are compelled to grant a license for our songs to anyone who requests it. Streaming services have been taking advantage of our position and have grossly undervalued our music. While they reap huge monetary benefits, they pay us in micro-pennies. As a result, professional songwriters, who should be able to rely on streaming mechanical royalty income from successful songs, continue to struggle to make a living. Songwriting in America by full-time professional writers can only be preserved if the statutory mechanical rates are raised to a level that fairly values our songs, no matter how those songs are distributed to the public. Without a substantial increase, songwriting will cease to be a viable profession from which young aspiring songwriters can expect to make a decent living. I made these statements over five years ago, and they are even more true today.

### **The *Phonorecords III* Decision**

5. When the Judges issued their decision to increase mechanical rates in *Phonorecords III*, songwriters were, for the first time in years, hopefully optimistic. This decision was supposed

---

<sup>1</sup> I attach my written direct testimony from *Phonorecords III* as COEX-10.1.

to be the largest mechanical royalty hike in history and had taken many years to achieve. The Judges' decision to increase our rates was a meaningful acknowledgment that we have, in fact, been grossly underpaid by the digital streaming services and deserve to be more fairly compensated for our work.

6. With the rate increase, a full-time career as a professional songwriter looked as if it was once again going to become a viable possibility. But the reality of the increase did not live up to what we had believed would be the case. As a practical matter, our streaming royalties did not increase. First we learned that Spotify paid less under the new *Phonorecords III* rates than the *Phonorecords II* rates and had even demanded a REFUND from the publishers. That move was discouraging, disheartening, and insulting. And this was on top of all of the streaming services except Apple banding together to appeal the whole ruling. While the details were not important to the songwriting community, the bottom line was we saw no increase.

7. In fact, I reviewed my royalty statements from Sony Music Publishing and never noticed any material increase in my streaming royalties during the period that the *Phonorecords III* rates were in effect (and my "splits" with Sony had not changed). NSAI got a lot of questions from songwriters about why they weren't seeing increases in their royalty statements. It is true that the 44% increase was to be phased in incrementally over a five-year period. But even by 2020, when the headline rate had increased incrementally to 13.3%, I saw no material increase in the actual dollar amounts of royalties I was being paid. Meanwhile the services were offering aggressive discounts on their music plans. A bigger share of a service's smaller revenue pie does not mean more money for songwriters. And, of course, we never got to the full increase that the Judges provided (15.1%) because the services preferred to spend millions of dollars litigating against songwriters instead of just paying us more. As a result of the appeal, in the fall of 2020,

they greedily went back to paying under the old *Phonorecords II* rates that were agreed to over thirteen years ago (in *Phonorecords I*), years before any of the companies litigating this case were even offering a streaming service in the U.S.

8. To sum up, though the *Phonorecords III* rates had been officially increased, as the Judges so eloquently stated, “to ensure the continued viability of songwriting as a profession,” we have effectively seen little if any benefit from this increase because of the discounting and the appeal.

9. The royalties I earn from the services for streaming my songs are shockingly low. In 2019, I received a mere [REDACTED] when Spotify streamed nine songs from my Sony repertoire (“Sony songs”) over [REDACTED] times. While Apple is one of the biggest companies in the world, I was paid approximately [REDACTED] in 2018 for over [REDACTED] streams of those same songs by Apple.

10. More people than ever use streaming services and more people than ever are listening to my songs on those services. My songs are being streamed millions of times more than in previous years. But I’m appalled when I look at my royalty statements and see very little additional earnings for those additional millions of streams. For example, Apple streamed my Sony songs about [REDACTED] times more in 2019 than it had in 2018, but what I received was only [REDACTED] more.

11. I used to rely on mechanical royalties for mortgage payments, my kids’ college, or even the occasional vacation. Now, I can barely rely on them for a month’s worth of groceries.

### **The Plight of Songwriters is Graver Than Ever**

12. While I’m fortunate to have had a long and successful songwriting career that allowed me to provide for my family, as each year passes, and as streaming continues to dominate

music consumption, it has become more and more difficult to support my family and plan for their future with the royalties I earn from songwriting.

13. When I started out, songwriters who had songs recorded by big name artists could reasonably expect meaningful royalties from those album cuts and singles. But now, despite continuing to write songs for some of the most successful and well-known Country artists, my mechanical income is drastically less than what I once received from physical sales and permanent downloads. Millions of streams of my songs pay almost nothing. As a result, my “retirement” has disappeared. Last year, I had to sell our family home of 32 years. We could no longer afford to live there. We downsized to a smaller, more affordable house. If it were not for my publishing advances, we might not even have a home. And I am one of the lucky ones – many of my songwriting friends and heroes have lost their homes. I believe our songs have value and meaning in people’s lives regardless of the ways in which people listen to them.

14. In the last couple of years, I have watched my friends and colleagues give up full-time songwriting, forced to pick up second and third jobs because they could not support themselves anymore just writing songs. A co-writer of one of my Number 1 hits now does carpentry and tile work, remodeling homes and renting out his back room for extra cash. Several friends, including one who also wrote a Number 1 hit, now drive Ubers and Lyfts to make ends meet. Another very talented songwriter with numerous cuts left songwriting to return to a job in a medical office.

15. Based on my experience and my knowledge of the Nashville songwriting community, writers with artist or production potential are more likely to get signed or to secure a significant advance. Publishers are being more cautious when signing young, craftsman songwriters with potential because the odds of recouping their investments are lower than when

they sign a songwriter-artist or songwriter-producer. For songwriters who do not have the other revenue streams that songwriter-artists or songwriter-producers have, mechanical royalties are a lifeline. Without professional, non-performing songwriters, some of America's greatest music would never have been created. Artists like Aretha Franklin, Frank Sinatra, Diana Ross, Whitney Houston and Elvis Presley made their careers singing songs written by non-performing, "pure" songwriters. America exports these songs around the globe, and they bring both export revenue and great pride to our country. Jazz, Bluegrass, the Blues, Country, R&B, Hip Hop and most of today's popular music were "born in the U.S.A."

16. Our ability to recoup our publishing advances has also been drastically affected. Most of us, especially early in our careers, depend on publishing deals to survive. The advances publishers pay out under these deals give songwriters the ability to focus on their craft. Publishers also provide songwriters with significant creative support. They offer feedback on songs and connect songwriters with recording artists and other songwriters for collaborations. Publishers are also a primary force in developing artist/writers, often playing a larger A&R development role than the labels themselves. This is especially important to new songwriters who are still developing their talent.

17. Publishers recoup these advances from mechanical royalties, sync income (if any) and the publishers' share of performance royalties where the songwriter has a co-publishing deal until the balance is paid back. The songwriters' share of performance royalties is usually paid directly to the songwriter by PROs, such as ASCAP, BMI, and SESAC and so is not used to recoup the advance. With the current streaming mechanical rates, the chances of recoupment have significantly decreased. For example, I signed with Warner Chappell in 1984. I started off with an annual draw of just over [REDACTED]. As I began to write platinum-selling and chart-topping songs,

Warner Chappell increased my draw to reflect my ability to recoup their advances. I also acquired half of my publishing rights. By 2004, I was receiving an annual draw of [REDACTED] and when I left Warner Chappell that year, I had an unrecouped balance of [REDACTED]. I recouped that advance balance in June 2008, less than four years later. This was possible because people were still buying CDs and albums and the royalty rate for those sales was 9.1 cents per-song per-copy. After I left Warner Chappell, I signed with Famous Music, which was later acquired by Sony.

18. By the time I left Sony in 2008, there was already a shift in music consumption that made recouping more difficult. First came the “unbundling” of the album (i.e., the ability to purchase downloads of individual songs, rather than the entire album), which substantially reduced my income from the album. I had two Grammy-nominated cuts on Dierks Bentley’s Number 1 album, “Long Trip Alone,” one of which was the title track and the other a Number 1 hit, but the decline in CD sales made it more difficult to recoup. But the biggest factor was the start of streaming and the rapid decrease in the sales of physical products and digital downloads. The destruction of the sales market has accelerated since 2011 when Spotify started in the U.S. and the streaming services, instead of paying 9.1 cents per record sold or downloaded, instead pay micro-pennies despite the increased access and additional listeners. That shift in how music is consumed has drastically reduced my royalties.

19. The pandemic compounded these issues. Our performance and synchronization royalties plummeted because, in many parts of the country, the bars, restaurant, retail stores, and music venues that generated those royalties were forced to shut down or severely limit their operations. Radio and TV are also paying less to some of our PROs.

20. To help support songwriters in need, NSAI created the WRITER Foundation in May 2020. The fund made grants of \$1,000 each to professional songwriters whose incomes had



been adversely impacted by the pandemic. These grants were made possible by a generous \$250,000 donation from Jon Platt, CEO of Sony Music Publishing, along with donations from Concord Music Publishing, Universal Music Publishing Group, and others. Within a couple of days of opening the grant applications, we had already received more applications than available grants. In response to this need, Sony Music Publishing donated an additional \$250,000 two days later. Universal also separately launched a grant program that offered financial assistance to songwriters. Recently, Sony offered further support with its “Songwriters Forward” initiative, eliminating unrecovered balances for certain songwriters who signed with Sony prior to 2000.

21. Meanwhile, the streaming services’ income exploded during the pandemic. More people were streaming our music than ever before. You would think that as music consumption increased, so too would our paychecks. But even when streaming reached an all-time high, our royalty checks remained almost the same. The streaming services did not share their success with songwriters. It is grossly unfair that our regulations allow streaming services to deny songwriters fair compensation even though the streaming services profit off songwriters’ work.

22. The songs we write are valuable intellectual property. I came to Nashville at a time when a hard-working songwriter could make a decent living from his life’s work. None of us do this to get rich. It’s a passion, a calling, and at one time, if we did our jobs well, we could expect to buy a home, raise our kids, pay for college and weddings and maybe even retire eventually. No more. Our survival is at the mercy of how our music is distributed and the business practices that dominate those distribution channels. Amazon, Google, and Apple chose business models that use our music, which they sometimes give away for free, to sell their other products like smartphones and smart speakers. Amazon’s model also practically gives our music away to entice customers to purchase Amazon Prime subscriptions, so they’ll buy other goods from Amazon. Spotify

prioritizes its market share rather than profits, making its founder and CEO Daniel Ek an incredibly rich man. The streaming services chose the business models that benefitted them the most and took advantage of the compulsory license and songwriters' inability to negotiate in a free market. They made deliberate business decisions that minimized songwriter royalties. Songwriters do not get to choose how their music is distributed, who can license it, or how much the fan pays to access and listen to it. Our compensation is determined not by the value of our work, but by corporations trying to maximize their profits at our expense. Our songs do not, and should not, become less valuable just because people are listening to it on their iPhones, Google Androids and Alexa devices instead of a CD player.

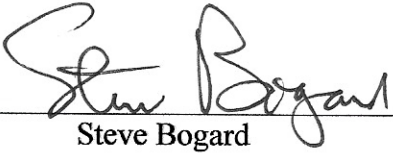
**Mechanical Rates Should Increase Under the Music Modernization Act**

23. In 2017, I was re-elected as the President of NSAI after leaving the position in 2013. I was honored and excited to be elected again. President of the Board of Directors of NSAI is a voluntary position for which I have great passion. I'd like to think I've contributed significantly to the organization over the years. At that time, I knew we were on the cusp of enacting important legislation that would impact songwriter compensation for decades to come. I had remained engaged and very much wanted to be involved in that process.

24. In October 2018, Congress passed the Music Modernization Act ("MMA"). NSAI had been working for years, alongside Representative Doug Collins, Marsha Blackburn, and the Songwriter Caucus, to pass legislation that would help songwriters get paid fairly. We have walked the halls of Congress relentlessly for decades asking for changes, and we finally saw the opportunity to bring these changes to life in the MMA. The bi-partisan law is the culmination of many negotiations and meetings between virtually every stakeholder in the music industry. Along with the songs I have written, this is the proudest achievement of my career.

25. Before the MMA, my streaming royalty rates were tied to laws from 1909 written to prevent one player piano roll company from getting a monopoly (by imposing a compulsory license on songwriters). Those laws, as Representative Collins noted in a speech to Congress, caused songwriters to be paid drastically below market value for nearly a century. The MMA changed the standard to a market-based “willing buyer/willing seller” royalty rate standard, which mandates a rate upon which a willing buyer and a willing seller would agree. Even though songwriters are not in reality willing sellers, this standard was enacted to ensure that songwriters are paid as if they were. After so many years of having our incomes decimated first by piracy – which the music industry, including NSAI, largely defeated through litigation and education campaigns – and then by these absurdly low streaming music royalties, songwriters are very hopeful that they will see a noticeable increase in our compensation. We write the songs that mark the moments in the lives of all Americans. We pray, dance, dream, fall in love, marry, and mourn to the music and lyrics created by songwriters. Ours is a labor of love. Shouldn’t we also be able to make a living from the fruits of that labor?

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief. Executed on October 13, 2021 in Franklin, Tennessee.

  
\_\_\_\_\_  
Steve Bogard

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(Phonorecords IV)

Docket No. 21-CRB-0001-PR (2023-2027)

**WRITTEN DIRECT TESTIMONY OF JAMIE FLOYD**

1. My name is Jamie Floyd and I live in Nashville, Tennessee. I am a 24-year veteran of the music industry and a professional songwriter. I respectfully make this statement in support of an increase in the statutory rate for mechanical licenses for interactive streaming.

2. As I explain in detail below, despite the fact that I have had a great deal of critical success as a songwriter, I have been unable to make enough money from songwriting alone to support myself, and, at various points in my career, have needed to work a second full-time job as a waitress to do so. But I have always been a more prolific songwriter when I did not have to do so.

3. Songwriters are the bedrock of the music industry—there is no music and no music streaming services without them—and we deserve to be fairly compensated, but the companies that operate the music streaming services consistently undervalue and minimize our contributions. I have worked incredibly hard for the critical acclaim and success that I have achieved as a songwriter and believe I was put on this earth to write songs. All I ask is that I and my fellow songwriters are fairly compensated for our contributions so that we can write great songs without needing to work multiple jobs just to make ends meet.

**A Life Devoted to Music**

4. I have dedicated my life to music for as long as I can remember. I grew up in West Palm Beach, Florida and come from a long line of musicians. My parents were full-time professional musicians, playing top 40 covers in country clubs across Florida. My grandfather was a Navy drummer and my uncle toured with Michael Jackson and Taylor Dayne. Growing up, I was always listening to the great singer-songwriters like James Taylor, Vince Gill, Bonnie Raitt, and Garth Brooks. From a young age, I understood the importance and power of a song and the emotions it could evoke.

5. I was only two years old when I began performing alongside my parents. I continued to sing and perform throughout my entire childhood. I worked hard and, in 1999, when I was only 14 years old, I signed my first record and publishing deal with Ric Wake, who was the Vice President of Epic Records. Epic quickly arranged a co-writing session for me and a couple of experienced and esteemed songwriters, including Greg Barnhill, who had written songs for Etta James, Trisha Yearwood and Martina McBride. This was a surreal experience for me—I was given the opportunity of a lifetime to write songs with talented and respected songwriters. With their help, the songs started to flow out of me. After our session, Greg Barnhill told my mom that I had a natural ability and instinct to have a career as a songwriter.

6. My record deal did not work out, but I continued to pursue my dream to make it in country music. I knew my best chance of success would be in Nashville. I worked hard and graduated high school a year early so I could get a job and save money so I would be able to move to Nashville.

7. Between my savings and the academic scholarships I received, I scraped together enough money to enroll at Belmont University in Nashville in August of 2003. Belmont is well-

known for its music program and I knew I would become a better songwriter and artist if I could meet the right people and take advantage of everything the school had to offer.

8. Given my financial constraints, I was not sure how long I would be able to afford Belmont, so I made it my business to make the most out of the time I had—and I did. I networked with the right people and found myself making music as often as possible. I gained invaluable experience before I decided to drop out after two years so I could spend my time (and money) pursuing my dream to become a professional songwriter. I got a full-time job in a restaurant so I could support myself while I wrote, often working 100 hours a week split between songwriting and the restaurant.

9. In 2007, after years of honing my craft, I was able to secure another publishing deal with Cherry Heart Music. I signed an 18-month deal for [REDACTED], receiving a draw of [REDACTED] per month. The income I earned from this deal covered my rent, but I still needed to work in the restaurant to make enough money to cover all of my other expenses, including personal expenses such as putting food on my table, and songwriting expenses, such as hiring musicians, renting music equipment and the costs to record demos.

10. In 2009, I signed my third publishing deal with Steve Seskin and Why So Serious Music. Steve Seskin is a successful songwriter who has written for renowned artists like Garth Brooks, Reba McEntire, and Tim McGraw, to name a few, and has had several Number 1 hits. After writing with me just one time, Steve decided to form a publishing company just so he could sign me to a two-year deal as a songwriter and pay me a living wage. I was paid a [REDACTED] per year advance, which allowed me to leave the restaurant industry for about a year.

11. I went back to waitressing in 2010, before I knew that Why So Serious Music was renewing my publishing deal. In 2011, I re-signed with Steve Seskin and Kobalt, with another

██████████ per year advance for another two years. This money, along with some other money I was bringing in, allowed me to quit waitressing for about 18 months, from 2011 to 2013.

12. During those periods of time when I did not have to work a second full-time job as a waitress, I was able to focus on my songwriting. The fact that I didn't have to split my time between waitressing and songwriting was important for my songwriting career and helped me hone my craft and become a better songwriter. I was able to write for more hours every day and I doubled my output in terms of the number of songs I was able to write. The more songs I wrote, the better the odds one or more would find success. I had the time to pursue and follow through on more ideas, and better songs, as I could spend more time sharpening my skills and fine tuning my songs.

13. While writing for Steve, I wrote my first cut on a major album—*Once*, recorded by Ronnie Dunn, which was released in 2011 on Ronnie's self-titled album. *Once* was inspired by a relationship of mine that ended poorly; in comforting me, one of my co-writers told me not to be upset because in reality, love only really ever works out once. Ronnie's album held the Number 1 spot on Billboard's Top Country Albums, and was Number 5 on the U.S. Billboard 200 list. Although the song I wrote was not one of the singles from the album, the mechanical royalties earned on the song from physical and digital download sales of *Once*—over ██████████—are still more than the mechanical royalties earned for any of my songs in the digital streaming era.

14. In addition to writing commercial songs, I also had some early success writing songs for television and movies, including for Dolly Parton's Lifetime movie *A Country Christmas Story*. The money I was paid to write these songs helped me start my own publishing company, Jamie Floyd Music, in 2013. I took a leap of faith and a risk on myself in going off as my own publisher. But I also had to go back to waitressing so I could make enough money to pay myself to write (just as a publisher would pay a songwriter through an advance or draw).



15. I was working two full-time jobs as both a waitress and a songwriter, which was exhausting. I normally worked over 80 hours a week. I had to fight so hard to have some quality of life, but I was constantly working at least 16 hours a day split between writing and waitressing. I would wake up early in the morning to write by myself or with others until around 3:00 pm, when I would go into the restaurant. I usually worked until midnight most weeknights, and even later on the weekends when I worked 15-hour double shifts, and would then wake up and do it all over again the next day. Sometimes I would forego sleep entirely because there was just not enough time in the day for me to work in the restaurant and get my songwriting done. While this was a challenging time that required me to work virtually around the clock, I was willing to make these sacrifices in order to create songs I was proud of.

#### **An Award-Winning Waitress**

16. I was working full-time as a waitress when I wrote the song *The Blade* with two industry veterans around May of 2013. During a co-writing session, Allen Shamblin, who wrote Bonnie Raitt's *I Can't Make You Love Me*, mentioned a saying he had heard about how in life "sometimes you catch it by the handle and sometimes you catch it by the blade," the point being that when something bad happens, what matters is how you deal with it and persevere. This idea quickly transformed into a love song and we wrote the lyrics "you caught it by the handle and I caught it by the blade." I was able to draw from my past heartbreaks and other life experiences. When we finally finished writing the song, Allen, Marc Beeson (the third writer for *The Blade*) and I had tears in our eyes because we could feel the emotion and beauty of our creation. *The Blade* became the title track to Ashley Monroe's 2015 album, and was named one of "The Best Songs of 2015" by *The New York Times* and NPR. Ashley told *Rolling Stone Country* that she thinks *The Blade* "will go down as being one of the best-written songs. I'm just shocked at how good it is every time I sing it."

17. The album was also nominated for a Grammy award. The moment I learned of the Grammy nomination, I was at the restaurant, holding a tray of beer and typing in a customer's order when someone congratulated me. I knew I should have felt excited, but I couldn't shake the fact that I had been behind the restaurant in the dumpster breaking boxes down earlier that day. I thought "okay, I have the title track to a Grammy-nominated album but what difference does it make in my life—I still need to waitress."

18. While my song was having all of this critical success, I was still stuck working a second full-time job. It made me feel like I could never do enough. What would I have to do to not have to work in a restaurant? How many accolades and how high would I have to build this tower in order to be paid enough money as a songwriter to quit waitressing? If the title track on a Grammy-nominated album was not enough, then what was? I struggled with these conflicting emotions. And, as the royalties from *The Blade* started to come in, it made me realize that it would be extremely hard to just be a songwriter, living only off of my royalties.

### **In Search of a Radio Single**

19. From my experience, songwriters today can become financially secure only if they are able to write radio singles. The consensus in the country music community is that, in a world where streaming dominates distribution and physical records and digital downloads are disappearing year by year, it is basically financially pointless to write a song unless it is the type of song that will make it on the radio. This is because the majority of songwriters will not make significant money from royalties unless the song is also on the radio because mechanical royalties are absurdly low, especially given the number of people streaming these songs.

20. So many songwriters have become so disillusioned by the low mechanical streaming royalties that it has started to impact the way we write songs. While we used to be able to write with

anyone and hope we would ultimately be fairly compensated through our royalty payments, many of us are more now hesitant about writing with artists or songwriters who are not supported by a label, or do not have radio hits, because there is little prospect of making any money from those songs unless the song is a radio hit. For me in particular, if I want to maximize my chances making any money from a song, I try to only write with a maximum of three people (one of whom is an artist), only write with an artist who has a major record deal, and only write with an artist whose new album does not yet have a single.

21. It is sadly no longer enough to write an amazing song or co-write songs with songwriters for the sake of creating music. Streaming has become the primary mode of music consumption, and as all songwriters know, streaming royalties literally pay micro-pennies per stream and end up totaling next to nothing. It has made the recipe for financial success nearly impossible and is crushing to songwriters like myself. The fact that I now have to take these things into consideration is disheartening because I do believe it affects the types of songs I write and, at times, hampers my creative process.

22. Because of the financial incentive, I generally feel forced to write songs I think could become radio singles, even if that is somewhat of a crapshoot, and even though radio singles are not necessarily the types of songs I would always choose to write. To me, radio hits are generally up-tempo, formulaic, happy, under four minutes, and are about a subject that is not too deep or dark or political and that is easily digestible. Some of the best and most impactful songs do not fit this mold, yet they have the ability to touch many different types of people and help people through different life experiences. Just imagine some of the great songs that were not radio hits, but that are now considered among the greatest songs ever written. Or maybe your favorite song—the one you danced to at your wedding—was “just” an album cut? While the financial success of such songs may not

match their emotional impact, that does not make them less valuable. Yet these types of songs are increasingly in jeopardy of never being written. Radio hits can be great songs but the music industry depends on songwriters to write all different types of songs, not just those that will make it to the radio.

23. It saddens me that I and other songwriters are writing fewer songs that have the capacity to touch different people in different ways because they need to focus on writing one particular type of song. And it is even sadder that money is to blame. Low mechanical royalties are not just negatively impacting our ability to have a livelihood, but are impacting the way we write and the types of songs we write. I believe this is having a detrimental effect on the music industry as a whole.

### **An Uncertain Future**

24. The future of my songwriting career is very uncertain, which is crazy considering my success over the last 10 years. I have written over 60 songs that have been recorded, two of which have appeared on Grammy-nominated albums, 21 songs in upcoming Broadway and off-Broadway musicals, 13 songs on award winning albums, another sung by Kelly Clarkson, and others sung by artists such as Kesha, Miranda Lambert, Brian McKnight, Hayden Panettiere, and Kellie Picker, among others. I have been sought out to write songs for multiple television shows, including ABC's hit show *Nashville*, songs and soundtracks for movies, and an entire Broadway musical. But, even with all of my success, I have barely received any mechanical royalties, and given the current rates, I cannot depend on my mechanical royalties to keep me afloat.

25. Mechanical streaming royalties need to increase to help provide songwriters with the opportunity to make a living just writing songs. While an increase in mechanical streaming income will not by itself solve all of the economic problems of songwriters, it is an essential place to start

and it will certainly help. Without an increase in our mechanical streaming royalties, it will become more and more difficult, if not impossible, to have a career as a full-time songwriter. As someone who has worked both as just a songwriter and as both a songwriter and a waitress, I get the most out of my songwriting when I am able to focus on it 100% of my time.

26. In 2016, I was featured in the documentary “The Last Songwriter,” which focuses on the hardships of being a songwriter. Garth Brooks, who is both a writer and an artist, lamented that songwriting is the least rewarded but most important part of the music industry. While it is the golden age for consumers of music because of the ease and accessibility of listening to millions of songs through streaming, it has been challenging for the people who create the music.

27. In 2017, for example, I was riding high. I had just finished writing the entire soundtrack for *The Last Movie Star*, a Burt Reynolds movie starring Burt, Chevy Chase and Ariel Winter, and had won “Best Original Song” for the movie’s final song at the Nashville Film Festival. I had also signed a publishing deal with a [REDACTED] advance and was able to stop working in the restaurant after four years of waitressing. However, about eight months into my publishing deal, I learned my contract would not be renewed when it was set to end in March 2018 (the publisher actually shut down later in 2018). Come February of 2018, I had to look for a waitressing job because without my publishing advance, I needed to make up for the income I was about to lose.

28. Losing my publishing deal could not have come at a worse time, as I was set to fly to Los Angeles to attend the Hollywood premiere of *The Last Movie Star* in early March. I got a restaurant job but had to negotiate my start date so I was able to make it to the premiere. I was able to attend the event, but I had to fly home the very next day so I could make my shift at the restaurant. The contrasts in my life in that moment were a bit surreal. Here I was, on the plane so I could walk the red carpet at a premiere for a movie for which I wrote the entire soundtrack, but at the same time,

I was studying and memorizing the wine list for the restaurant job I had to get because my publisher had shut down and I had no income to support me. I once again felt as though whatever I could accomplish as a songwriter, it would never be enough to support me financially.

29. My career—as did the careers of many songwriters—became even more uncertain when COVID hit, despite the fact that I was writing as much as I ever had. I ended up losing my waitressing job and all of my income for the year. Like most songwriters, I was living paycheck-to-paycheck and had no savings to fall back on. I was able to secure unemployment and applied for some of the government grants, which kept me afloat for a little. The songwriting community was incredibly supportive. Nashville Songwriters Association International sent gift cards to help pay for groceries, and other non-profits gave me money for some emergency dental work. I will always be grateful to their support during this time.

30. However, come March of 2021, I only had \$35 left in my bank account. I knew I had to do something—I made a pact with myself that if I was not able to get a publishing deal by April 1, 2021 I would have go back to waitressing (assuming I could even do so given the pandemic). As I was making calls to publishers in Nashville trying to secure a deal of any kind, I got a call from Randy Jackson’s publishing company, Left on Sunset. They said they had heard my new Kelly Clarkson song, *I Would’ve Loved You*, and loved it. I was fortunate to be able to sign a two-year publishing deal shortly thereafter which, serendipitously, began exactly on April 1, 2021. The advance I am being paid is enough for the time being to allow me to once again stop waitressing and just focus on songwriting.

31. Based on my prior experience, I recognize that this relative financial security might be short lived, and so I remain as frugal as ever. While I feel fortunate that all of my hard work has paid off with this new deal, it is still just a two-year deal. And because I cannot depend on mechanical

royalties being sufficient to sustain me, my future as a songwriter remains uncertain. If I do not have a radio single, or another publishing deal when this one ends, I will likely be forced to return to waitressing yet again.

**Insufficient Streaming Mechanical Royalties**

32. The mechanical royalties paid out by the interactive streaming services—operated by some of the biggest companies in the world—in relation to the amount that people listen to the music, are seen as a “joke” by many in the songwriting community because they are so low. I have not yet even earned enough mechanical royalties on any of my songs in order for my publishers to recoup their advances.

33. In 2020, my song *Anything But Love* was recorded and released by Ingrid Andress. The song appeared on Ingrid’s debut and Grammy-nominated album, which not only held the Number 1 slot on Billboard’s Emerging Artist chart, but was also credited with breaking the record for the most streams from a debut female artist in country music. Somehow, writing a song recorded by the most-streamed debut female streaming artist does not correlate with a big pay day (or really any pay day) for the songwriter. Since the song has debuted, I have made approximately [REDACTED] in mechanical streaming royalties.

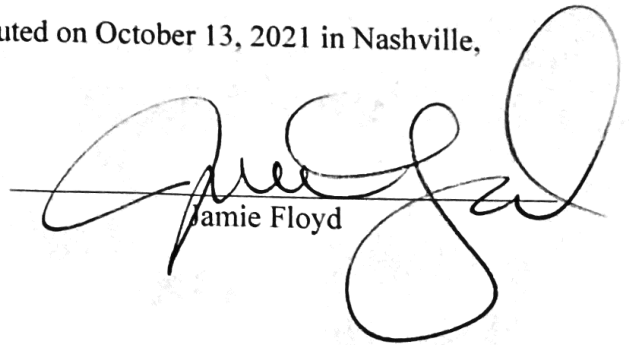
34. Songwriters are the heartbeat of the music industry. Without us, the streaming services would have no business, as there would be no songs to stream. The companies that operate the streaming services need songwriters and their songs, yet they do not seem to want to pay us a fair royalty to use those songs.

35. I believe I deserve to be compensated fairly by those companies, as do all of the other songwriters. I know how much work goes into being a songwriter, how much my fellow songwriters and I have had to sacrifice in order to be songwriters, and how many hours we have to work at other

jobs to make enough money just to continue writing songs. I am willing to sacrifice sleep, time with family and friends, and many other things because I sincerely believe in my talent and in the power of my songs to inspire and to bring people joy. However, I believe it is unfair to sacrifice so much and get paid so little.



I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief. Executed on October 13, 2021 in Nashville, Tennessee.



Jamie Floyd

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(Phonorecords IV)

Docket No. 21-CRB-0001-PR (2023-2027)

**WRITTEN DIRECT TESTIMONY OF ANGELA HUNTE**

1. My name is Angela Hunte. I respectfully submit this statement to the Copyright Royalty Judges in support of an increase in mechanical royalty rates for interactive music streaming which greatly impact songwriters across the country.

2. I am a Grammy-winning songwriter. I've written songs that have been recorded by top pop and hip hop artists, including Britney Spears, Jay-Z, Alicia Keys, Rihanna, Snoop Dogg, Amy Winehouse, and others. My songs have helped make artists into stars. But despite my songwriting success, I had to relocate my family from New York City in 2015 because the cost of living was too high, given the low royalties I was receiving from music streaming. Since then, I have had to quit songwriting to keep the lights on in my house for my family.

3. I co-wrote "Empire State of Mind" – a song that has been called New York City's greatest modern anthem, and critically acclaimed across the globe. "Empire State of Mind," recorded by fellow New Yorkers Jay-Z and Alicia Keys, is about the hope and opportunity New York represents and the chance to follow your dreams no matter who you are or where you come from. It is ironic that I, the writer of such an iconic New York City anthem,

had to leave New York and give up on *my* dream – a songwriting career for which I worked endlessly and tirelessly to achieve my success.

4. I was born in East Flatbush in Brooklyn, New York. My sister and I were raised by my single mom. We moved to Trinidad when I was 2 years old, where I spent the majority of my childhood, and moved back to Brooklyn at age 14. I have a lot of friends who fell into music because they grew up with families in the music business. That is not my story. No one in my family was connected to the music industry. But I felt a connection to music from a very young age, and was drawn towards all different genres, including pop, hip hop, R&B and also Caribbean sounds.

5. When rapper Doug E. Fresh came to perform at my school in 7th grade, I was in total awe. I had never seen anyone perform live and I could feel each and every word and melody of his songs. I knew from that day I wanted to make music and started my journey to find my place in the music industry. I began applying to music programs around the city and, in 1987, I was accepted into a performing arts program in Manhattan called Talented Unlimited, which fueled my passion for music even more.

6. I spent four years at Talented Unlimited, and left a month before graduation to work for Classic Concepts – famed music video producer Lionel C. Martin’s production company, which was working with some of the hottest R&B singers and rappers to produce their music videos. I took a job as a casting director initially, knowing it would be a great opportunity for me to work with artists and other music professionals and learn about the industry.

7. During this time, I was also part of a short-lived quartet called 7669. I wrote songs for 7669 and was also the lead vocalist for the group. 7669 signed a record and publishing

deal with Motown Records in 1993 and we released our only studio album, *East from a Bad Block* in 1993.

8. My life may sound glamorous during this time, but it was nowhere close to that. I was working long hours and sleeping very little, but trying to learn everything I could about the business, and I was grateful for the exposure I had to different parts of the music industry. 7669 was not financially successful, and I was literally living off my \$40 per diem payments. I needed extra cash, so I secured a side job singing background vocals for some well-known artists.

9. However, after several years of working hard to learn the ins and outs of hip hop music video production, I worked my way up and became a stylist for Classic Concepts, and, after impressing Lionel Martin and Michael Bivens (a well-known producer at the time), I became the go-to music video stylist for the R&B artists on Biv 10 Records, a record label founded by Michael Bivens in 1992 through a joint venture with Motown Records. By the late 90s, I was at the top of my career as a stylist, having created some of the most definitive looks of the 90s in hip hop fashion. I was styling for groups like Boyz II Men and Jodeci, among others.

10. But despite being at the top of my game as a stylist, it didn't feel right to me. I had one true calling, which I wasn't pursuing: music. I was around music all the time as a stylist, but I wasn't *in* it, and I knew that was where I wanted to be.

11. I had to make a change. While writing songs for 7669, I discovered I had a natural talent for songwriting, which I could build on and master with practice, the right resources and mentorship. I also found that my experience as a stylist actually advanced my writing a great deal. I was able to take what I saw in the music videos and write visually, which allowed me to see music in a way that other writers could not.

12. I called Salaam Remi, a close family friend and Grammy-nominated producer and told him I wanted to pursue a career in songwriting. Salaam thankfully saw my potential and took me under his wing. He mentored and developed my talents as a songwriter. In 2001, I signed a deal with EMI Music Publishing and moved to Europe. With the publishing advance provided by EMI, I was able to spend the next couple years learning what it takes to be a songwriter and writing as much I could, without having to worry about how I was going to afford dinner that night.

13. After a few years of writing day-in and day-out, learning from some of the most talented songwriters, and devoting all my energy and time to my writing career, I started getting album cuts. My songs were recorded by famous UK artists such as Ms. Dynamite, Ms-teeq and Beverley Knight, among others. During this time, I also penned the track “Do Somethin” for Britney Spears, which appeared on her 2004 *Greatest Hits: My Prerogative* album. “Do Somethin” was then released as a single in 2005.

14. My success continued when I returned to the United States in 2006. Upon my return, through my network, I connected with Sean “Diddy” Combs’ group Danity Kane, and wrote their first single, “Show Stopper.” This track reached No. 8 on the Billboard Hot 100 Chart.

15. By 2008, I had made a name for myself as a songwriter and was being approached to write for some of the most famous pop and hip hop artists, including Nas, Diplo and Rihanna, to name a few.

16. In 2009, I co-wrote “Empire State of Mind.” My co-writer and I were in London on an overseas trip feeling homesick the day we went to Al Shux’s London Studio. I was sick that summer, going through a tough time and feeling down. She and I talked about how much

we complain about New York City – the busy streets, the crowds and pushing, and the subway system – but in that homesick moment, I would have taken all the challenges of New York City life over anything. By the time we left the studio, we had a new demo for the song.

17. “Empire State of Mind” is the kind of song that is impossible to ignore. It forces you to feel something. The song is about being able to dream big and reach for the stars, no matter who you are or where you come from. It’s about hope and possibility and provides moments of clarity. The song can make even the most mundane moment feel profound. I was so happy that the world felt all of this too.

18. The song was released on October 20, 2009. The week of the song’s release, 250,000 copies were sold. By August 2012, that number exceeded 5 million. It spent five weeks at No. 1 on the Billboard Hot 100. The *New York Times*, *Rolling Stone*, MTV and *Entertainment Weekly* all listed it as one of the top songs of 2009. I, along with my co-writers, won a Grammy for Best Rap Song, and we were nominated for Record of the Year.

19. “Empire State of Mind” earned a reputation as the 21st century theme song of New York City, celebrating its grit, glamour and hard-earned opportunities. Most recently, the song has been deemed an anthem to New York City Healthcare Heroes during COVID-19, bringing people together during one of the most challenging times in history. I understand that elementary school children in Brooklyn sing this song as part of their stepping-up ceremonies, and that my song inspires young children and encourages them to follow their dreams.

20. The release of “Empire State of Mind” was also a career defining moment for me. It told the story of my life and my city, and I felt so proud that my songwriting and production work were recognized and appreciated on a level I never could have imagined. It was also a

somewhat historical moment, given that a famous male rapper (Jay-Z) took a song of two female writers and producers, which is not something you see a lot, even to this day.

21. I received a [REDACTED] advance the year “Empire State of Mind” was released, which was recouped the following year. The money I earned from “Empire State of Mind” and my other album cuts during this time period allowed me to pay off all my debts. I felt optimistic and assumed that once I paid off my debts, I’d continue to see significant royalties and make it big.

22. But this is not what happened. As music streaming took hold of the industry, replacing physical and digital download sales, my mechanical royalties declined. I continued to write hits, including a single on Snoop Dogg’s *Reincarcerated* album, titled “Here Comes the King;” a single on Wu-Tang Clan member Raekwon’s *Fly International Luxurious* album, titled “Soundboy Kill It” featuring Melanie Fiona; and a song on Tamara Braxton’s *Love and War* album, called “One on One Fun,” among others. Despite the success of “Empire State of Mind” and multiple singles and cuts on albums for famous artists in the following years, I found myself unable to sustain my career and support my family with my songwriting income. I reaped the benefits of my success in the physical and digital download days, but that all changed in the world of music streaming, where the streaming services pay very little to stream my songs.

23. My royalties declined, as the cost of living increased. In 2015, I was forced to relocate from New York City – my hometown – to Miami Beach, because I could not afford to pay rent for my apartment and my studio and put my kids through school. This was not a decision I wanted to make. I always thought I would raise my kids in New York City, one of the epicenters of the music industry, and where I came of age. The decision stung even more as a writer of “Empire State of Mind” because of everything the song represents.

24. When I got to Miami, I had to make another heart-wrenching decision. With my streaming royalties dropping, I could not continue songwriting. I had to figure out a way to support my family. After months of soul searching, and with the support of my manager, DJ Buddha, I decided to once again pursue being an artist – but this time out of necessity.

25. Being an artist takes time away from my songwriting and that is not something I wanted to sacrifice. And no one should want songwriters to quit writing to work in other jobs to pay the bills. But I had no choice. Working as an artist did not allow me to pay off my mortgage or go on expensive vacations, but it kept my lights on. And I am grateful for that.

26. But my artist career has also taken a hit since COVID. Given that the opportunities to perform live completely dried up for a lengthy period (and remain far fewer than before as people remain cautious about being indoors with large groups of people), I have tried to turn back to songwriting. But knowing how little I will earn from streaming by writing songs for other artists, I have switched gears and am now trying to write for television and film, which pay substantially more in synchronization royalties. This is not an option for most writers. Television and film are really hard to get into with limited job availability, and involve a completely different way of writing. However, with my reputation and name in the industry, my skillset, and a manager who advocates tirelessly for me, I am fortunate to have these opportunities available to me.

27. There is no question that the songwriting industry is in peril. It has been eroded by streaming, which pays songwriters virtually nothing, despite how much people are listening to our music, and how many phones, computers, headphones and so many other products companies like Apple, Amazon and Google are selling to those people who stream music on the



services they offer. There are times when I avoid looking at my royalty statements because the tiny streaming royalties are so frustrating and depressing.

28. Songwriters are undervalued and that needs to change. Songwriters are talented, educated and extremely hard-working individuals, who are poorly compensated by the companies that operate the streaming services. Yet we are told by the billionaire executives of these companies that if we want a larger share of a shrinking music revenue pie, we need to “put[] the work in.” To that I say, we do and we have “put[] the work in.” We’ve created the songs without which your music services would not exist. You are profiting handsomely from our songs, in many ways. They have made you rich, but us creators continue to struggle. We deserve more respect and recognition for our irreplaceable contributions to your music streaming services and to your companies.

29. I therefore urge a dramatic increase in mechanical royalties rates. Songwriters need to be better compensated in order to continue to provide songs that bring people together and that represent hope and possibility.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief. Executed on October 13, 2021 in Miami Beach, Florida.

A handwritten signature in black ink that reads "Angela Hunte". The signature is written in a cursive, flowing style.

---

Angela Hunte

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(Phonorecords IV)

Docket No. 21-CRB-0001-PR (2023-2027)

**WRITTEN DIRECT TESTIMONY OF AUTUMN ROWE**

1. My name is Autumn Rowe and I am, first and foremost, a songwriter. I respectfully make this statement in support of an increase to the statutory rate for the mechanical royalties that the companies operating the streaming services (“Services”) pay to songwriters and music publishers.

2. As I will elaborate below, songwriting was how I made a name for myself in the music industry. Yet, over the years, I have been unable to earn enough as a songwriter to sustain myself. I have had to pivot, investing a significant amount of time and money to learn other skills. Those skills have, thankfully, helped me get other jobs in the music industry that have paid the bills. For example, I have been a vocal coach for television shows, a disc jockey (“DJ”), a music producer, and a music educator. But these jobs have unfortunately taken time away from my songwriting. However, I needed to learn these skills, and take these jobs, because the royalties I earn from songwriting are not enough to support me on their own.

3. While the pennies I receive from the Services for streaming my songs are so low at times that they make me want to quit, my drive and love for music keeps me going. I did not choose a career in music, it chose me—and I have sacrificed and worked incredibly hard to make sure I am

able to continue to be a songwriter. I hope the Judges will help songwriters get fair compensation from the Services so future generations of songwriters can afford to focus on writing great songs.

**Songwriting Requires Tremendous Dedication and Effort**

4. I was born and raised in the housing projects in the South Bronx, in New York City, by a single mother. My childhood was hard. I needed to be resilient and adaptable in order to survive. That experience turned me into the woman and songwriter I am today, someone who refuses to give up and refuses to fail, no matter the sacrifice, and who is able to write authentically about hardship and resiliency.

5. Living in New York City, I was surrounded by all different genres of music. I grew up listening to Stevie Wonder, James Taylor, Carole King, Mariah Carey, Bette Midler, Michael Jackson and Aretha Franklin. I'd open my window and hear DJs play hip hop, rap and R&B music on the streets day and night. I remember buying magazines and putting musicians' pictures up on my wall with my picture next to them—I aspired to meet all of these people and be one of them.

6. I decided I wanted to pursue a career in music when I was around 16 years old. In high school, I joined four different choirs, formed a “girl group” band, and managed to get an internship at Island Records. While I was doing everything I could, getting my foot in the door of the music industry was hard, especially as a minority woman.

7. At around 22, I formed my second band, called The Autumn Band, as the lead singer. While I was with my band, my love of songwriting began to flourish. I was given the opportunity to write my own songs and was fortunate enough to write them with the help and guidance of Swizz Beatz, a well-known and respected record producer and rapper who later married Alicia Keys. I developed my skills by writing songs, performing them on stage, and seeing how the crowd reacted to them.

8. The next several years were grueling—both mentally and physically— while I worked more than full-time to support myself trying to become a better songwriter and build up my song catalog. From 2009 to 2010, I was working full-time as an assistant manager in a shoe store, playing with my band, and also performing at weddings with a second band on the weekends. I consistently worked at least 80-90 hours a week and wrote songs in whatever time I had left. Many days, after I got off work in the evening, I would pay to take a two-hour bus ride to a recording studio in New Jersey, where I would write and record full demos of songs. I would finish at the studio anywhere between midnight and 4:00am, go back to the city, and do it all over again the next day. However, I had a goal—I knew that a publishing company, Stellar/EMI, was looking for a female songwriter, and I was determined to build up a catalog of songs to present to them in the hopes I could secure a publishing deal. During this time, I probably wrote around 100 songs.

9. I was working non-stop and barely sleeping. I became sick from exhaustion and was really underweight because I could not find enough time to eat. After about a year of this unhealthy lifestyle, I took a week of paid vacation and spent it writing songs. I used some money I saved to stay in a hotel by the recording studio, to avoid the four-hour commute there and back. Before the week started, I said out loud, “I need to write a song where I can quit my job by the end of this week.” Putting those words out into the universe motivated me to work even harder and kept my hopes of making it as a songwriter alive.

10. I was given an instrumental track and was told that Stellar Songs had been searching for a songwriter to write a song over the track, but had not found anyone who could successfully do it. I decided to try and on the third day of my “vacation,” I wrote a song called *Happiness*. Stellar/EMI heard my song and loved it and I was offered my first big publishing deal in 2010. I have been with Stellar/EMI (now Sony Music Publishing) ever since. Stellar/EMI later teamed up

with the famous and successful production team Stargate, who found a YouTube star named Alexis Jordan to record it. The song was released in 2010 and was a huge hit around the world. It became the 2011 FIFA Women's World Cup dance anthem. It also opened the door for me to become a full-time songwriter—my publishing advance from Stellar/EMI allowed me to quit my job at the shoe store and focus on songwriting.

11. *Happiness* was my first big hit and is still, 11 years later, one of the songs I am the most proud of. It shares a message of happiness and how once you find yourself, you can find joy and happiness in the world.

12. After *Happiness*, I wrote Alexis Jordan's next two singles and wrote for artists like Leona Lewis (*Collide*, also featuring Avicci), Cher Lloyd (*Swagger Jagger*), Dua Lipa (*Room for 2*), Zendaya (*Only When You're Close*), Pitbull (*Only Ones to Know*), and Kylie Minogue (*Sexy Love*), among others. My publisher helped me network and meet more people in the industry. Most of all, my publishing deal provided me with the freedom to create music without needing to work a second job in the shoe store just to pay the bills. This gave me the time and resources to focus on becoming a better songwriter—which I did. I began to develop a name for myself, both in the U.S. and internationally, and more opportunities started to present themselves.

### **Diversifying to Offset Low Mechanical Streaming Royalties**

13. In 2011, I was contacted by representatives of Simon Cowell to become a coach on the television show *X Factor*. Simon had learned of me through the songs I wrote for Alexis Jordan. I was intrigued by this opportunity and wound up taking the job in 2012. I saw the *X Factor* as an opportunity to expand my network in the industry and to help mentor young artists, which had always been a passion of mine. At the time, I had a number of songs earning significant royalties, so I didn't need the *X Factor* to pay my bills. But growing up as poor as I did, I was engrained with a survivor

mentality and was taught not to put all of my eggs in one basket, and this proved wise in the long-term.

14. I coached the *X Factor* for a season. I was fortunate to work alongside Britney Spears, Simon Cowell and L.A. Reid. I helped develop artists like Fifth Harmony (two of whose members are now well known—Camila Cabello and Normani), Carly Rose Sonenclar and Bea Miller. I had a high success rate on the show—all five of the contestants I coached are still performing, and several of them have record deals and are still on television. My work on *X Factor* then lead to another opportunity in 2013, when I joined the show *America's Got Talent*, also as a vocal coach, and where I stayed for the next five seasons.

15. During this time, I had a good degree of financial security because I was able to earn money from both the television show and from songwriting. This, however, changed in around 2015-2016, when I started to see a decrease in my songwriting royalties, despite the fact that my songs continued to be successful and recorded by a number of well-known artists, including Jesse McCartney, Kylie Minogue, Beatrice Miller and Grace VanderWaal. By this time, people were listening to music primarily through streaming. While more people had increased access to music, including my songs, the royalties I received were much lower than they had been before streaming took over the industry. As a result, while I had previously been able to live primarily off of my songwriting income, I now needed the money I was making from *America's Got Talent* to pay my rent. A stark reality set in: I would either need to reconsider my career as a songwriter or continue to work at other jobs, since there was no way being just a songwriter was going to pay my bills. By 2016, I was ready to leave *America's Got Talent*. The schedule was taking a toll and a significant time away from my songwriting. But I knew that my songwriting royalties alone would no longer suffice, and that I would need to work a second job, so I enrolled in a school to learn how to become

a DJ. DJ school was a year-and-a-half, 8-course program, costing thousands of dollars (in addition to commuting costs) which taught me how to use Ableton, a music production program, and Serato, a DJ program used to manipulate records, as well as how to DJ on turntables, beat match by ear, and create remixes and mashups. I started DJ school while I was still coaching on *America's Got Talent* and graduated in 2018. I quit *America's Got Talent* shortly thereafter.

16. The skills I learned in DJ school, particularly mastering Ableton and Serato, allowed me to broaden my skillset to include music production. Songs are often created by “pure” songwriters adding lyrics and melody over musical embeds or “tracks” created by producer-songwriters (sometimes referred to as “track guys”). By writing the lyrics and melody and also creating the tracks, I often contribute to the sound recording, but only receive songwriter royalties. I have however recently been able to leverage my production skills to receive payments from record labels for this additional contribution I made to the recordings of a few of my songs.

17. Additionally, as another source of income, I have taken what I have learned from being a vocal coach on television and have begun to coach young singers and songwriters. Given my diverse background in the music industry, I have also become a paid speaker and an educator, speaking on panels discussing women in music and teaching courses to college-age students about topics such as how to overcome writer’s block, how to write for other artists, and how to write a song 100% by yourself.

18. While I needed to diversify and learn new skills to achieve even the most basic level of financial security given the pennies paid by the Services, it is disheartening because my other jobs distract from my songwriting, which is my true passion and perhaps my greatest skill. It does not make sense to me that I can often earn more money playing other people’s songs as a DJ for four hours than I can from six months of the mechanical royalties I earn in the U.S. from the songs that I



wrote. I have spent the better part of my life developing my songwriting skills, yet even as a successful songwriter, I cannot consistently depend on my songwriting to earn enough money to make a living. I am, as a result, writing fewer songs and spending more time focusing on my other sources of income.

### **Fighting for Change**

19. I have advocated for social change through my songs. Whenever I can, I try to work with artists who seek to do the same. I was fortunate to have the opportunity to co-write and co-produce Jon Batiste's new album *WE ARE*, which offers a view of American history through the lens of African-American pain. The songs I wrote for *WE ARE* communicate the feelings of tension and inequality I feel as a songwriter, as a woman, and as a person of color. I was thrilled to see Jon perform one of the songs I co-wrote with him for that album, *Freedom*, at this summer's rain-shortened "We Love NYC: The Homecoming" concert on Central Park's Great Lawn. The album has been critically acclaimed, and will be played as part of an exhibit at the National Museum of African American Music for the next 10 years. The songs on the *WE ARE* album have made a real impact and send a powerful message. The album title track *WE ARE* says: "We are the golden ones, and we are the chosen ones." It's all about being powerful, being yourself, and rising above. It has become the song of the Mask Up America campaign to help stop the spread of COVID and a song of the Black Lives Matter march. It is one of my songs that I am most proud of.

20. *WE ARE* is a perfect example of the impact songs can have on society. Songs can build a group identity, engage audiences and rally people to take action and speak out for what they believe in. I hope to continue to use my talent as a songwriter (and producer) to create more songs that can evoke such emotion and change in our society.

**The Financial Challenges Caused by Streaming**

21. Overcoming the low royalties paid by streaming Services has become the biggest challenge in my career. I am a part of a dwindling middle class of songwriters, and I have only been able to remain in the music industry by spending time and money to learn other skills in addition to songwriting. Most songwriters that I know are living month-to-month and are plagued with fear about the future of their careers and how they will financially survive. There are very few of us left who can afford all of the things that come with being middle class—a house, a car, health insurance. If I was just a songwriter trying to survive off of my mechanical royalties alone, I would make less than the minimum wage in some states.

22. I have been a successful songwriter, by any measure of that term, but the mechanical royalties that the Services pay to use my songs are not commensurate with my accomplishments, nor what my songs provide to the Services. Those royalties are so low, that they barely factor into my income stream. For example, when I was a vocal coach on television, I made approximately [REDACTED] per season—this is nearly three times the amount I made from my mechanical streaming royalties in the United States for all of 2019 and 2020 combined. This is astonishing, considering my songs were streamed over [REDACTED] times during that period, yet I only made about [REDACTED]. While artists are celebrating on social media for hitting a million streams of a song, a check for mechanical royalties for a million streams for a songwriter makes me want to cry, as it is basically a few hundred dollars. A songwriter celebrating hitting a million streams would not even be able to pay for the party celebrating that accomplishment. With most people listening to music through streaming, I am more dependent than ever on mechanical streaming royalties.

23. If I could change anything about the music industry, I would like songwriters to be better protected and better compensated. The Services make so much money off of our songs yet

seem unconcerned about the future and sustainability of the songwriting profession. The royalties the Services pay us in the United States are so bad that I have considered either stepping back from songwriting or moving to Europe to write songs, because songwriters are better compensated over there. And, in addition to the low royalties, songwriters are expected to cover many of their own costs, including the cost of recording demos, paying for food while writing with artists, transportation costs to get to the writing session, and travel costs, including airfare and hotels. I usually feel helpless as a songwriter because I have certain fixed costs and no control over the royalty rate I am paid by the Services. Apple can charge what it wants for an iPhone, but given the compulsory nature of the license, I can't negotiate with Apple a license fee for Apple to use my songs.

24. People think it takes only a couple of hours to write a song. That's not true. It can take months to write a song. And, moreover, every song I write is the end-product of 11 years of my hard work—thousands of sessions; hundreds, if not thousands, of songs; and tens of thousands of hours spent honing my craft.

25. While I will be able to survive financially because of how hard I have worked to diversify myself, I worry for the current and future generations of songwriters. I am afraid that if the Services continue to refuse to pay songwriters what we are worth, songwriting will become a luxury, and only a privileged few will be able to afford to write songs. The industry will suffer—there will be less diversity, and fewer stories and songs from people from different walks of life with different perspectives. This is going to happen unless we can figure out how to monetize and value songwriting as a real profession, as the songwriters deserve. I therefore urge the Board to increase the mechanical royalty rates for streaming so that songwriters can be fairly compensated and continue to write songs that impact society in powerful ways. I am thankful to have a voice in this proceeding, and I appreciate the Judges' time in reading my story and considering the points that I have made.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Executed on October 13, 2021 in Los Angeles, California.

A handwritten signature in cursive script, appearing to read "Autumn Rowe", is written over a horizontal line.

Autumn Rowe

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(Phonorecords IV)

Docket No. 21-CRB-0001-PR (2023-2027)

**WRITTEN DIRECT TESTIMONY OF JIMMY YEARY**

1. My name is Jimmy Yearly and I live in Hendersonville, Tennessee with my wife and three young children. I am a songwriter and I respectfully make this statement in support of the proposal of National Music Publishers' Association and Nashville Songwriters Association International ("NSAI") for an increase in mechanical royalty rates for interactive music streaming.

2. I have been a full-time professional songwriter for over 25 years. I have had significant success in my career. I am a Grammy-nominated songwriter and have written seven Number 1 Billboard Country singles, and several other songs which have reached Billboard's Country Top 40 for some of the most-renowned Country artists, including Lee Brice, Rascal Flatts, Tim McGraw, LeAnn Rimes, Kenny Chesney, David Lee Murphy and Jake Owen, among others. My songs have also won awards from the Academy of Country Music, Country Music Association, Broadcast Music, Inc. and NSAI.

3. Despite such critical and chart success, I find myself struggling to make a decent living. After decades of devoting my life to full-time songwriting, I am now forced to seriously consider a complete shift in careers in order to support my family. In my view, this is due in

large part to the current, very low mechanical royalty rates paid by companies operating interactive streaming services that use all of the songs that I and countless other songwriters create.

**My Background**

4. I grew up in Hillsboro, Ohio, living in a double-wide trailer. I was born with a music bug in my blood. At the age of 8, I joined a Southern Rural Gospel Group with my family and we sang in churches throughout Ohio. We performed 3 to 5 nights a week for 10 years, both because of our collective love for music, and also to earn much needed income for our family.

5. My father bought me my first guitar from a hardware store for \$20, and he taught me how to play music. He was a good man, but he was also emotionally and physically abusive at times. Oddly enough, our abusive relationship is what made me discover my love and talent for songwriting. I would often lock myself in the bathroom with my guitar and – using a make-shift guitar pick I crafted out of a baseball card – pour my emotions into creating and singing songs. I felt the healing power of making music.

6. At age 13, my uncle told me that people in Nashville can make a living writing songs, and so I set my goal to become a professional songwriter and told myself I was going to do whatever it took to achieve success in songwriting.

7. My father passed away when I was 18 years old – 6 days before I graduated high school. I jumped on a Greyhound bus the day after his funeral and headed to Virginia to live with my uncle. There, I started a band called Burning Hearts. I would write music during the day, and play gigs with Burning Hearts at night for a small amount of cash. I would take one-off jobs such as landscaping and roofing work to earn money to make ends meet. And I finally

saved up enough money to buy a Martin guitar. At all times, I kept my focus on my goal – getting to Nashville to make music.

8. In 1994, when I was 24 years old, I finally found myself with an opportunity to move to Nashville. I sold that Martin guitar for \$600, packed my bags and made the move. When I got to Nashville, I grabbed as many gigs as I could and started performing in downtown Nashville. I continued writing songs all day, every day, and performed 4-hour gigs each night, which paid \$20, so that I could make sure I had food to eat the next day.

9. Within six months of moving to Nashville, I secured my first publishing deal with Hookline East, and received a small advance which helped pay the rent and put food on the table while enabling me to continue to write during the day and perform gigs at night.

10. In 1997, I met Paul Worley, a record producer primarily known for his work in Country music. In 1999, Paul helped me secure a joint venture publishing deal with him and Sony Tree Publishing. I was with Sony Tree Publishing for 5 years. The advance I received from Sony allowed me to write day and night. It allowed me to figure out how to be a better songwriter. During this time, I focused not only on my writing, but also on working with successful songwriters so that I could learn the business and hone my craft.

11. In 2004, Paul Worley and Wally Wilson – a veteran songwriter – formed Skyline Music Publishing and I signed with them as their first songwriter. During my time at Skyline, artists such as Rascal Flatts, John Michael Montgomery, Craig Morgan and Brooks and Dunn recorded my songs on their albums. None of these songs were big hits by today's standards. However, in the era of physical and digital album sales, the mechanical royalties I received from these cuts was enough to maintain my livelihood. For example, I wrote a song called "Yes, I Do" which Rascal Flatts released on its album *Me and My Gang* in 2006. Rascal Flatts sold 3.5

million albums just in 2006, and I earned enough in royalties from my album cut to recoup my advance, pay back debt I had, and continue to write full-time.

12. In 2007, I found myself without a publishing deal for the first time since 1994. I hustled to secure a deal. I eventually showed up at the front door of Blacktop Publishing, without a meeting or a known contact, and asked for a meeting. I played a few songs for the President and Vice President of Blacktop Publishing and got a call when I arrived home that Blacktop Publishing wanted to sign me. I was with Blacktop Publishing for over 2 years.

13. In 2009, I signed with THiS Music (a joint venture with EMI Music Nashville). My career took off when I signed with THiS Music. My song, “Why Wait” was released as the first single in August 2010 from the Rascal Flatts album *Nothing Like This*. It debuted at Number 34 on the Billboard Hot Country Songs chart the week it was released and eventually rose to Number 1 on that chart in December 2010. This was an incredible moment in my career; I felt like I had finally arrived.

14. Over the following 2 years, my songs were recorded by illustrious artists such as Easton Corbin, Martina McBright, LeAnn Rimes, Jake Owen, Bucky Covington, Heidi Newfield and James Otto. This included my song “Anywhere With You,” which was recorded and released as a single by Jake Owen.

15. In 2012, I signed with Sony/ATV (now Sony Music Publishing), when Sony acquired EMI. I am signed with Sony to this day, and my success has continued while with Sony. I’ve had my songs recorded by Lee Brice, Kenney Chesney, David Lee Murphy, George Strait, and Tim McGraw, to name a few. My songs reached the top of the Billboard Country Charts and received multiple awards from prominent Country music associations.



16. I could not have achieved this level of success without the years I spent honing my craft. I finally cracked the code and learned what it takes to achieve this level of success. This involved, among other things, showing up every single day and putting in the work to master the craft and write new songs.

17. My publishers – EMI and Sony/ATV, in particular – supported me in my success. Not only have my publishers provided me with advances, which allowed me to be a professional songwriter, but they have always made sure I have a full calendar and put me in the best rooms, giving me the greatest chance at success.

**Songwriters Cannot Sustain Themselves From Streaming Royalties**

18. During the physical and digital download sales era, I would have earned significant mechanical royalties from my songwriting success. However, streaming has diminished that success by paying less than pennies for streaming my songs.

19. Notwithstanding the continued popularity of my songs and the critical acclaim and chart success they have received, I have struggled in recent years to make a living and support my family with the royalties I earn from songwriting. I believe this is due in large part to the rise in popularity of interactive streaming, which grossly underpays songwriters. Unfortunately, given that streaming has become the primary way most people consume music, and is still growing and replacing other methods of music consumption each and every day, this problem is only getting worse.

20. The royalties I currently receive from streaming are jarring. For example, in the first quarter of 2019, I earned [REDACTED] for 89 of my songs (which comprise my Sony catalog) streamed on Apple Music almost [REDACTED] times. If you assume the duration of each song is approximately [REDACTED] minutes (which is a conservative estimate), that is approximately [REDACTED] of

consumer activity on Apple Music from which Apple benefitted – not me. Some of Apple’s iPhones cost more than what I received for [REDACTED] streams of those songs.

21. In a two-month period in 2019, I earned less than [REDACTED] from those same 89 songs Spotify streamed nearly [REDACTED] times. Songwriters directly contribute to Spotify’s revenue growth. Songwriters have made Spotify CEO, Daniel Ek, a billionaire. They have enabled Spotify to pay almost \$3 million a month in rent for fancy office space at the World Trade Center in New York City that includes an Arcade room, a “Wellness” studio, a café with a dedicated “barista,” and a kitchen stocked with free meals. Songwriters make it possible for Spotify to host expensive offsite retreats for its executives in Mexico. Meanwhile, Spotify pays me less than pennies to stream my songs that, in part, make it all possible.

22. I am stunned by these numbers. It is no wonder songwriters are struggling to make a decent living and, as I explain below, have forced us to transform the way we write for any chance of a significant financial return. In fact, despite the increasing number of hits and singles I have had over the past 11 years, I remain dependent on ongoing advances, because my mechanical royalties from interactive streaming are so low.

**Streaming is Impacting the Craft of Songwriting**

23. Because the royalties I receive from the streaming services are negligible, I rely on performance royalties from radio singles to sustain a living. What this means is that there is a great deal of pressure on me to have a single recorded and released each year, which is a difficult feat to achieve and something only a small fraction of even the most successful songwriters are able to accomplish.

24. The vast majority of songwriters I know are in the same boat as me – doing whatever we can to have a single released and broadcast on the radio. However, writing a song

for the radio is very different than how I was taught to write, and how many of the greatest songs were written. Songs on the radio are typically shorter, faster, and repetitive in melody and lyrics. This, in turn, is changing the way many songwriters write and the types of songs we write, and limiting the breadth and diversity of the American songbook.

25. For example, in 2012, before songwriters fully understood the impact of the music streaming market, I wrote a song with Jessi Alexander and Connie Harrington, called “I Drive Your Truck.” It was about a real-life soldier who died in Afghanistan on his third attempt to save members of his battalion, and the soldier’s father, Paul Monty, who during an NPR interview said that he remembers his son by driving his son’s truck and feeling his presence. This father’s story spoke to Jessi, Connie and me and we knew we had to write about it.

26. “I Drive Your Truck” was recorded by Lee Brice and released as a single in 2013. It was nominated for a Grammy Award, and won an ACM Award and a CMA Award for Country Song of the Year.

27. Millions of people gravitated towards “I Drive Your Truck” because they were able to feel the loss Paul Monty experienced through this song. This is the amazing thing about songs. You can listen to a song and see your story in that song and know that you are not alone. There are not many other vehicles that enable us to feel this way.

28. I am writing and hearing fewer and fewer songs like “I Drive Your Truck.” Songwriters are trying to write for the radio, and songs like “I Drive Your Truck” are not typically the ones that make it on the radio. In fact, the radio success of “I Drive Your Truck” came as a surprise. I never thought it would make it to the radio, nor did I care at the time as I just wanted to tell Paul Monty’s story.

29. I feel as though I no longer have the creative liberty to write the songs that I want to. Every single day, I find myself abandoning songs, or portions of a song for this exact reason, despite recognition of a great song in the making. The conversation of “I don’t know, is radio going to play that?” is always looming in my co-writing sessions and undoubtedly blocks the creation of songs that have the ability to touch the lives of so many people.

30. Royalties I receive from my songs on the radio are already on the decline and I worry that within a few years, streaming will be the primary mode of Country music consumption and that radio will essentially cease to exist. My songwriter friends and I have a saying – “when radio goes, we go.”

**Time For A Second Job**

31. When I committed to pursuing a full-time professional songwriting career in 1997, I never looked back. Despite the countless all-nighters spent writing, the sacrifices, and the frustration and rejection at times, I never gave up. From the time I secured my first publishing deal in 1994, except for the occasional gig, I never took a second job because I knew that would take me away from writing.

32. However, in the last few years, and even before the COVID pandemic, I have been forced to work at a second job. Since 2019, I have been working with the Premier Speakers Bureau, creating and performing motivational speeches to make extra money. Even though my songs are as popular as ever, I have been forced to take on these speaking engagements to make up for the deficiency in my songwriting income so that I can support my family, keep a roof over our heads and put my kids through college. And working this second job has definitely impacted my songwriting output. I am writing fewer songs and have less time to hone and improve what I do write.

33. Not only am I currently working two jobs, but I am also now seriously considering a career change, and making public speaking my sole or primary career. I have a wife and three young children, and I need to be proactive and plan for the future. I realize that the way things are going – with the music industry being completely taken over by BigTech, using my music to sell their phones and voice-activated speakers – I will soon no longer be able to make a living as just a songwriter. Were songwriters compensated fairly by these streaming services, I would not need to even think about making this career change.

34. Almost every songwriter I know in the industry is experiencing the same problem. The songwriters are working so hard to try to make it work in their writing careers, but are also simultaneously working other jobs for additional income or planning for other careers. My number one fear in life today is the uncertainty of where I will be in 5 years.

***The Streaming Services Have Songwriters to Thank for Their Success and Need to Compensate them Accordingly***

35. It is hard for me to grapple with the inequity in the interactive streaming market.

36. Songwriters are the reason that the streaming services exist. Without songwriters, the streaming services would have nothing to sell. Why, then, as music consumption continues to grow and the revenues of the companies operating the streaming services continue to climb, am I getting paid pennies? The pie is getting bigger, but our share of the pie is not growing (in fact, when it comes to what I am paid per-stream, it appears to be diminishing).

37. Like so many other songwriters, I have spent countless years cultivating my craft and creating songs that artists want to record and that people want to listen to. It seems unfair that the companies operating the streaming services are able take my words and my melodies, and those of countless other songwriters, and make billions of dollars from them in their various

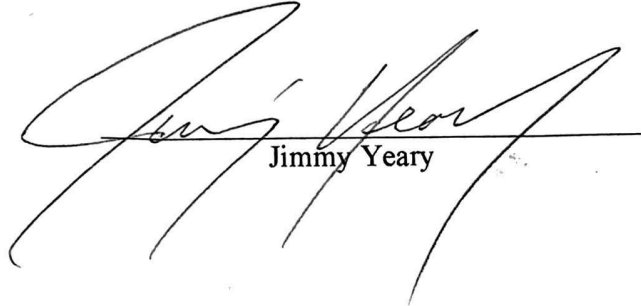
other businesses and in the value of their companies without paying us fairly. The CEOs and Executives of these companies can buy whatever they want – Jeff Bezos can spend \$5.5 billion to be in space for 4 minutes – but I just had to sell another Martin guitar 6 months ago so that I could make home improvements. Those CEOs and Executives can also sell their phones, delivery services, and smart speakers at whatever price they like, but I can't negotiate the price their trillion-dollar companies pay me for my songs.

38. I used to encourage new songwriters that if they work hard at songwriting there was a real path to becoming successful and being able to make a respectable living. I cannot offer this advice anymore because of the micro-pennies songwriters receive from interactive streaming which now dominates the way people consume music.

39. Songwriters understand that it takes time before we can reap the financial benefit from the songs we create. But if songwriters never realize a financial benefit, they will lose the incentive to write, and they will be forced to pursue other lines of work, in which case the entire music industry will fall apart because without songs there are no recordings.

40. I urge the Board to increase the royalty rates that these companies pay for my songs and those of countless other songwriters, to ensure that we have the incentive to continue to produce the music that everyone loves to listen to, and that these companies are profiting handsomely from.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief. Executed on October 13, 2021 in Hendersonville, Tennessee.



Jimmy Yeary

# Proof of Delivery

I hereby certify that on Wednesday, October 20, 2021, I provided a true and correct copy of the Volume II - Written Direct Testimony of Songwriter Witnesses to the following:

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Google LLC, represented by Gary R Greenstein, served via ESERVICE at ggreenstein@wsgr.com

Joint Record Company Participants, represented by Susan Chertkof, served via ESERVICE at susan.chertkof@riaa.com

Zisk, Brian, represented by Brian Zisk, served via ESERVICE at brianzisk@gmail.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

Spotify USA Inc., represented by Joseph Wetzel, served via ESERVICE at joe.wetzel@lw.com

Apple Inc., represented by Mary C Mazzello, served via ESERVICE at mary.mazzello@kirkland.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Amazon.com Services LLC, represented by Joshua D Branson, served via ESERVICE at jbranson@kelloggghansen.com

Signed: /s/ Benjamin K Semel